

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JOSEPH MCCARTHY

PLAINTIFF

VS.

CIVIL ACTION NO. 3:13-cv-924-DPJ-FKB

SHERIFF TOMMY WADDELL, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS SHERIFF
OF NESHoba COUNTY, MISSISSIPPI; NESHoba
COUNTY, MISSISSIPPI; AND JOHN DOES 1-100

DEFENDANTS

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COME NOW Defendants Sheriff Tommy Waddell and Neshoba County, Mississippi, by and through counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and file this their Motion for Summary Judgment, as follows:

1. Plaintiff filed suit on April 25, 2013 against Neshoba County and Sheriff Tommy Waddell, both individually and in his official capacity, alleging federal claims brought pursuant to 42 U.S.C. § 1983 and state law claims pursuant to the Mississippi Tort Claims Act (“MTCA”), MISS. CODE ANN. § 11-46-1, *et seq.*

2. The only claims that remain pending in this case are (1) Plaintiff's Fourth Amendment excessive force claim against Sheriff Waddell regarding the firing of his service weapon; (2) Plaintiff's Fourth Amendment claims against Neshoba County; and (3) Plaintiff's alternative claim under the MTCA against Neshoba County regarding the shooting incident.

3. As set forth more fully in Defendants' separate Memorandum of Authorities, there are no genuine issues of material fact, and Defendants are entitled to judgment as a matter of law as to each of Plaintiff's claims against them.

4. In support of the instant motion, these Defendants rely on their separate Memorandum

of Authorities, as well as the following exhibits attached hereto:

- “A” Deposition of Joseph McCarthy;
- “B” Deposition of Tommy Waddell;
- “C” Deposition of Johnathan Spears;
- “D” Deposition of Colby Clay;
- “E” Deposition of Brad Winstead;
- “F” Deposition and Expert Report of Tom Long; and
- “G” Neshoba County Use of Force Policies.

WHEREFORE, PREMISES CONSIDERED, Defendants Sheriff Tommy Waddell and Neshoba County, Mississippi, respectfully request the Court to grant their Motion for Summary Judgment and to dismiss Plaintiff’s claims against them with prejudice as a matter of law.

Respectfully submitted, this the 9th day of April, 2015.

NESHOBA COUNTY, MISSISSIPPI, AND
SHERIFF TOMMY WADDELL, DEFENDANTS

BY: /s/ Steven J. Griffin
OF COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2015, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

Charles R. Mullins, Esq.
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Attorney for Plaintiff

/s/ Steven J. Griffin _____